

IN THE SPECIAL COURT OF EMINENT DOMAIN
DESOTO COUNTY, MISSISSIPPI

CITY OF OLIVE BRANCH, MISSISSIPPI

PLAINTIFF

V.

CAUSE NO. CO 2005-0930

JUDITH Z. KENDALL, WILLIAM MICHAEL KENDALL,
TRUSTMARK NATIONAL BANK AND BANK OF
AMERICA AS SUCCESSOR IN INTEREST TO
NATIONS BANK AS SUCCESSOR IN INTEREST TO
SOVRAN BANK

DEFENDANTS

AGREED JUDGMENT

In this cause, Plaintiff, City of Olive Branch, Mississippi, filed its Complaint on September 19, 2005, seeking to acquire a drainage easement and temporary and permanent construction easements over the land described in Exhibit "A" attached hereto and incorporated herein, and the landowner Defendants, Judith Z. Kendall and William Michael Kendall, as well as lienholder Defendants Trustmark National Bank and Bank of America as successor in interest to Nations Bank as successor in interest to Sovran Bank, were duly served with process of this Court. Therefore, this Court has jurisdiction over all parties to this case. Judith Z. Kendall and William Michael Kendall are the fee simple owners of the property subject to the instant cause. And, the Court having found that the parties have reached an agreement in the premises, does find and adjudicate as follows:

1. This Court has jurisdiction of the parties and subject matter herein.
2. Defendant Bank of America as successor in interest to Nations Bank as successor

FILED

OCT 20 2006

DALE K. THOMPSON, CIRCUIT CLERK
DESOTO COUNTY, MISSISSIPPI
MINUTE BOOK _____ PAGE _____

Bill + Return:
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in interest to Sovran Bank was duly served with process of this Court on September 27, 2005 as shown by proof of publication filed in the Court's records herein. Defendant Bank of America has failed to enter an appearance of any type and has failed to answer the Complaint filed by Plaintiff. Counsel for Plaintiff has received correspondence from Defendant Bank of America stating that said Defendant was unable to locate a loan number for the property as it relates to this cause of action. Defendant Bank of America was listed as a party defendant solely by virtue of a Deed of Trust executed by the Kendall Defendants to Sovran Bank recorded at Book 426, Page 43 in the Chancery Clerk's Office, DeSoto County, Mississippi. An attempted release was executed by First Union Mortgage Company purportedly cancelling said Deed of Trust, said release being recorded at Book 1057, Page 433 of the Chancery Clerk's Office. The Deed of Trust executed by the Kendalls to Sovran Bank was never assigned to First Union Mortgage Corporation so the attempted cancellation is arguably ineffective. Sovran Bank ultimately became known as Nations Bank and that entity ultimately became known as Bank of America, and said entity was duly served with process of this Court and added as a party Defendant by virtue of the afore-referenced Deed of Trust remaining of record in the Chancery Clerk's Office of DeSoto County, Mississippi. By virtue of Defendant Bank of America failing to enter an appearance and by virtue of Defendant Bank of America failing to answer the Complaint which was duly served upon said Defendant this Agreed Judgment shall constitute a Default Judgment as to Defendant Bank of America, successor in interest to Nations Bank, successor in interest to Sovran Bank, and said Defendant shall be entitled to no relief in the premises.

3. The Court is advised by both Plaintiff and remaining Defendants that the parties have reached a full and complete settlement of this matter and that the Defendant Judith Z.

Kendall is entitled to compensation for the condemnation of the land described in Exhibit "A" in the amount of FOURTEEN THOUSAND ONE HUNDRED DOLLARS (\$14,100.00). The Court is further advised that Defendant Trustmark National Bank waives any claim it might have to any portion of the settlement proceeds under its deed of trust on the property and approves disbursement of the proceeds to the landowners.

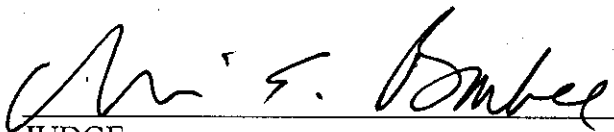
4. On May 11, 2006, Plaintiff deposited with the Circuit Clerk of DeSoto County the sum of SEVEN THOUSAND TWO HUNDRED DOLLARS (\$7,200.00) pursuant to the Order Granting Plaintiff Right of Immediate Title and Possession, being signed and filed with the Clerk of this Court on March 16, 2006. Plaintiff is, therefore, given credit for said amount as against the agreed upon due and just compensation recited herein.

5. The Court is advised that the parties hereto have specifically waived the impaneling of a jury, and are presenting an agreement in the form of an Agreed Judgment to the Court for consideration, and Defendants acknowledge to the Court that the amount of FOURTEEN THOUSAND ONE HUNDRED (\$14,100.00) constitutes full and just compensation due Defendants for the land and any and all damages or other rights pertaining to said land, and is in complete settlement of all issues resulting from the condemnation described in the petition filed herein.

IT IS, THEREFORE, ORDERED AND ADJUDGED that this Agreed Judgment shall be entered in this cause; that the default judgment be duly entered and awarded as to Bank of America as successor in interest to Nations Bank as successor in interest to Sovran Bank; that the impaneling of a jury is waived by all parties; that the City of Olive Branch, Mississippi is hereby awarded title and possession to a drainage easement and temporary and permanent construction

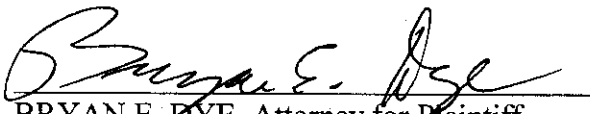
easements over and across the lands described in Exhibit "A" attached hereto upon the payment of FOURTEEN THOUSAND ONE HUNDRED DOLLARS (\$14,100.00) to Defendants, with credit being given to Plaintiff for the SEVEN THOUSAND TWO HUNDRED DOLLARS (\$7,200.00) previously deposited by said Plaintiff, and the parties shall be bound by this Agreed Judgment the same as if there had been a jury trial and a decision rendered accordingly; that this Agreed Judgment shall be duly recorded in the Land Deed Records of DeSoto County, Mississippi, confirming title for said drainage and construction easements over said lands to the City of Olive Branch, Mississippi; and, that all costs of court are assessed to Plaintiff.

SO ORDERED AND ADJUDGED, this the 20th day of October, 2006.

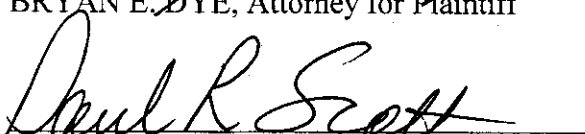


JUDGE
SPECIAL COURT OF EMINENT DOMAIN

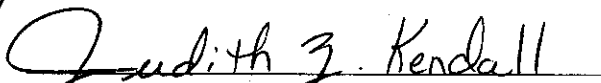
AGREED:



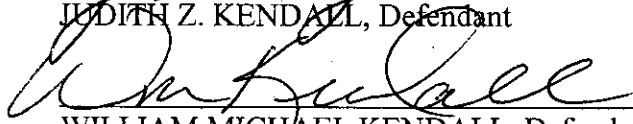
BRYAN E. DYE, Attorney for Plaintiff



PAUL R. SCOTT, Attorney for Judith Z. Kendall



JUDITH Z. KENDALL, Defendant



WILLIAM MICHAEL KENDALL, Defendant Pro Se

MICHAEL A. KING, Attorney for Defendant
Trustmark National Bank

STATE OF MISS., DESOTO COUNTY
CERTIFIED A TRUE COPY

OCT 20 2006

DALE K. THOMPSON, CIRCUIT CLERK
BY L. Bamber D.C.

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SO ORDERED AND ADJUDGED, this the _____ day of October, 2006.

JUDGE
SPECIAL COURT OF EMINENT DOMAIN

AGREED:

BRYAN E. DYE, Attorney for Plaintiff

PAUL R. SCOTT, Attorney for Judith Z. Kendall

JUDITH Z. KENDALL, Defendant

WILLIAM MICHAEL KENDALL, Defendant Pro Se



MICHAEL A. KING, Attorney for Defendant
Trustmark National Bank

DAVALL HILLS SUBDIVISION
SECTION C - LOT 16

BOOK 195, PAGE 498

EXHIBIT 1

Being a portion of Lot 16 of Davall Hills Subdivision, Section C, lying in Section 23, Township 1 South, Range 7 West in the City of Olive Branch, Desoto County, Mississippi as recorded in Plat Book 27 Page 50 in the Office of the Chancery Clerk of Desoto County, Mississippi, and being more particularly described as follows:

PERMANENT DRAINAGE EASEMENT

Being a 15 foot wide strip of land having a centerline described as follows: Beginning at a point on the existing 5 foot utility easement along the east property line of subject property located 119.46 feet north and 5.00 feet west of the southeast property corner; thence S 16°08'55" W an approximate distance of 110.78 feet to a point; thence S 72°51'47" W an approximate distance of 141.45 feet to a point on the existing 5 foot utility easement along the west property line, said point being located 77.19 feet north and 5.00 feet east of the southwest corner of subject property and containing 2,122 square feet, more or less.

TEMPORARY CONSTRUCTION EASEMENTS

Being 7.5 foot wide strips of land along both sides of the above described permanent drainage easement containing a combined 2,122 square feet, more or less.

